

Local Rules of Court (Distribution for Public Comment)

Per California Rules of Court 10.6.13, the Superior Court of California, County of Kern, is distributing the following proposed amendments to the Local Rules of Court for public comment for the January 2013 cycle. Public comment can be submitted by either mailing your comments to the Court Executive Officer, County of Kern, 1415 Truxtun Ave. Bakersfield, CA 93301 or submitting them via the following email site wmadmin@kern.courts.ca.gov. All submissions must be received by no later than the close of business on October 26, 2012.

Chapter I. General Rules.

Section 1.8.5 (d) 5. (TO BE AMENDED)

5. The following felony criminal informations must be filed in the Division in which the crime is alleged to have occurred in accordance with the zip codes as set forth in Appendix A. (Effective 1/01/11; rev. 1/01/13))

PC 243 Felony battery

PC 245 Assault with deadly weapon/force likely

PC 273.5 Spousal assault

PC 290 Failure to register as sex offender

PC 422 Threats

PC 460 (a) & (b) Burglary, 1st & 2nd degree

PC 470 Forgery

PC 476 NSF check, passing forgery

PC 487 Grand theft

PC 496 Receiving stolen property

PC 594 Vandalism

PC 666 Petty theft w/prior

~~PC 12020/12021 Possession of weapons/ammo/ex felon in poss.~~

PC 4501 Battery by prison inmate

PC 4502 Possession of weapon by inmate

PC 4532(a) & (b) Escape

PC 4574 Bringing weapons into prison

PC 4600 Damaging jail/prison

All Prison Cases not having the potential of an indeterminate sentence

PC19100 Carry concealed explosive

PC 19200 Possession of hand grenade

PC 20310 Possession of air gauge knife

PC 20410 Possession of belt buckle knife

PC 20510 Possession of cane sword

PC 20610 Possession of lipstick case knife

PC 20710 Possession of shobi-zue

PC 20910 Possession of writing pen knife

PC 21110 Possession of ballistic knife

PC 21310 Possession of dirk or dagger

PC 21710 Possession of composite or wood knuckles

PC 21810 Possession of metal knuckles

PC 22010 Possession of nunchaku

PC 22210 Possession of leaded cane etc.

PC 22410 Possession of shuriken
PC 24310 Possession of camouflaging firearm container
PC 24410 Possession of cane gun
PC 24510 Possession of firearm not recognizable as firearm
PC 24610 Possession of undetectable firearm
PC 24710 Possession of wallet gun
PC 29800(a)(1) and (b) Felon in possession of firearm
PC 29805 10 year firearm prohibition
PC 29815(a) Firearm possession – violation of probation
PC 29820(b) Firearm possession by specified persons prior to age 30
PC 29825(a) and (b) Firearm with restraining order
PC 30210(a) and (b) Possession of flechette dart or bullet with explosive agent
PC 31500 Possession of unconventional pistol
PC 32310 Possession of large capacity magazine
PC 32900 Possession of multi-burst trigger activator
PC 33215 Possession of shortbarreled rifle/shotgun
VC 10851 (a) or (b) Auto theft
VC 20001 Hit & run with injury
VC 23153 DUI with injury
VC 23550 Felony DUIs

1.8.5.d.6 (TO BE ADDED)

6. Generally unless otherwise set forth in these rules, the Probation Department must file Post Release Supervision Violations with the Metropolitan Division, Felony Department.

Rule 1.8.5.m (TO BE AMENDED)

(m) Venue for Probate and Guardianship Cases. Venue for Probate and Guardianship cases, except for those in 1.8.5.i, shall be in the Metropolitan Division

Chapter II. Small Claims Rules.

Rule 2.2 Service of Process ~~(Effective 7/1/03)~~ (TO BE AMENDED)

The plaintiff may exercise the option of service which includes service by certified mail or personal service. Service by certified mail is performed by the Clerk of the Court. Service of process ~~may~~ **can** also be provided by registered process servers, ~~the sheriff~~, or any person over the age of 18 who is not a party to the action (Code of Civil Procedure Part II, Title V, Jurisdiction and Service of Process). For personal service, it is the responsibility of the plaintiff to provide proof of service. The plaintiff shall not personally serve the Claim and Order. (Effective 7/1/03; **Rev. 1/01/13**)

Chapter III. Civil Rules and Civil Case Management.

Rule 3.8 Selection of Monitoring Judge and Setting Case Management Conference (Effective 7/1/03; Revised 1/01/13) (To Be Amended)

At the time the complaint is filed, ~~the clerk will select~~ a monitoring judge ~~shall be assigned at random by drawing from the pool of judges assigned and the clerk of the court~~ shall set a Case Management Conference ("CMC") for the case on said judge's calendar ~~not more than~~ within 180 days. ~~thereafter, and issue notice thereof, which notice will be served on all defendants by plaintiff and on all cross-defendants not already parties to the action by cross-complainants.~~ The clerk shall issue Notice of CMC date, time, and department by notation on the face of the complaint or by a separate Notice of CMC.

(a) Plaintiff must serve the Notice of CMC (if not noted on the face of the complaint) on each defendant along with the summons and complaint. Any cross-complainant shall serve upon any new party to the action a Notice of CMC, along with the cross-complaint and summons thereon. Proof of service of the complaint or cross-complaint and summons shall include proof of service of a Notice of CMC if not noted on the complaint.

(b) The term "monitoring judge" as used in these Rules shall include direct calendaring judges as well as judges who are assigned cases for "all purposes" by the Presiding Department. The monitoring judge to whom the case is assigned shall be responsible to move the case along to an orderly disposition under these Rules. All motions provided for under these Rules shall be made to the monitoring judge. If the assigned judge is operating a direct calendar court, the assignment shall be deemed for "all purposes." (Effective 7/1/03)

3.11 Stayed Cases (Effective 7/1/03) (To Be Deleted)

~~When an action subject to these rules is stayed for one or more of the reasons set forth in subparagraph (d) of Rule 3.1385 of the California Rules of Court, the responsible party, in addition to filing the notice of stay and notice that the stay is vacated or no longer in effect, shall file with the court on a periodic basis no less frequently than every ninety (90) days, a status report advising the court, to the extent applicable, of the following:~~

~~(a) Efforts being made to obtain relief from the stay so that the action in this court can proceed.~~

~~(b) The progress being made in the federal or higher state court action in which the stay was issued to resolve the issues which would otherwise require litigation in this court.~~

~~(c) The propriety of severing parties, causes of action and/or cross-actions which would be subject to the stay and proceeding with the balance of the litigation.~~

Chapter VI. Family Law Rules.

To Be Added (Preamble)

References in these rules to Orders to Show Cause and Motions shall also be deemed to apply to Requests for Orders.

All parties and attorneys in family law proceedings are expected to be familiar with and to comply with California Rules of Court, Rule 5.83 and the procedural milestones set forth therein.

Rule 6.3.4 Calendar Call (Effective 7/1/03) (To Be Deleted)

If there is no appearance at the first calendar call, and no communication from counsel, or either party, the matter may be removed from the calendar or may be heard as an uncontested matter. When the case is called, counsel or a party appearing in propria persona must state his or her name, identify the party being represented and indicate the estimated time for hearing. The Court must be advised then whether there is a request for a continuance at the time the case is called. (Effective 7/1/03)

Rule 6.6 Interview of Children in Chambers (Effective 7/1/03) (To Be Deleted)

A request by a party for the court to interview a minor in the judge's chambers must be made by stipulation of both parties. The parties must also stipulate that there is to be no reporter present. (Effective 7/1/03)

Rule 6.7 Income and Expense Declarations and Exhibits (Effective 7/1/03) (TO BE DELETED)

- (a) In all Orders to Show Cause and Notices of Motion matters and trials with issues of child support, spousal support, attorney fees and costs, or the assessment of sanctions other than contempt, the parties to the proceeding must file an Income and Expense Declaration with the court. (Effective 7/1/03; rev. 1/1/07)
- (b) If available with reasonable diligence, the Income and Expense Declaration must have attached W-2 forms for the prior year, and the preceding 3-month's payroll stubs, or a statement explaining the reason for the failure to provide these documents. If a payroll stub does not include a year-to-date total for earnings, the parties must also attach a statement by the party's employer verifying year-to-date earnings. (Effective 7/1/03)

Rule 6.6 Confidential Documents (Effective 1/1/13) (TO BE ADDED)

All documents obtained from any juvenile case file or from any child welfare agency must be treated as confidential by all parties and attorneys in accordance with Welfare and Institutions Code sections 827, 827.10, and California Rules of Court, Rule 5.552. Any party who seeks to file with or present to the Family Court any juvenile case or child welfare agency document or record must first present a request to file such documents under seal. Any pleading filed with the Family Court which attaches, recites, or quotes from any juvenile case or child welfare

agency record without a prior request and order to file under seal, may be stricken from the Family Court file or ordered to be placed in a confidential portion of the file.

6.7 Stipulations (TO BE RENUMBERED FROM 6.8)

Rule 6.9 Case Status Conferences and Settlement Conferences (7/01/11) (TO BE DELETED)

Rule 6.9.1 Setting of Mandatory Settlement Conference (Effective 7/01/11) (TO BE DELETED)

A matter will be set for Mandatory Settlement Conference only after the filing of an At-Issue Memorandum and Declarations Regarding Service of Preliminary Declaration of Disclosure are filed by both parties, or the filing of one Declaration Regarding Service of Preliminary Declaration of Disclosure and an order granting relief pursuant to Family Code section 2107, subdivision (b)(2) or (3). (Effective 7/01/11)

Rule 6.9.2 Meet and Confer Requirement (Effective 7/1/03: rev. 7/01/11) (TO BE DELETED)

a. ~~Before the filing of a Settlement Conference Statement, the parties must conduct an informational "meet and confer conference" or must file a declaration setting out reasons why such a meet and confer conference did not take place. All issues must be identified in detail, presented in written form (described as an "Issues Statement") and exchanged at the conference. At the conclusion of the conference, a "Settlement Conference Statement" addressing all issues must be prepared. All attorneys and self-represented parties must ensure that a Settlement Conference Statement is filed at least five (5) days prior to the settlement conference. (Effective 7/1/03: rev. 7/01/11)~~

b. ~~The Conference Statement must include: (Effective 7/1/03: rev. 7/01/11)~~

~~i Title and case number; (Effective 7/1/03: rev. 7/01/11)~~

~~ii. Date and place of conference and identification of all parties and attorneys present; and, (Effective 7/1/03: rev. 7/01/11)~~

~~iii A list of resolved and unresolved issues. (Effective 7/1/03: rev. 7/01/11)~~

Rule 6.9.3 Mandatory Settlement Conference Requirements (Effective 7/1/03) (TO BE DELETED)

~~(a) The Settlement Conference Statement must be filed five (5) calendar days before the settlement conference date. (Effective 7/1/03)~~

~~(b) Current Income and Expense Declarations must be filed with the Settlement Conference Statement in all cases involving monetary issues. An updated Income and Expense Declaration will not be required if it is clearly stated there is no change from the last filed Income and Expense Declaration. (Effective 7/1/03)~~

~~(c) A request to continue a settlement conference is within the discretion of the court and requires a showing of good cause. (Effective 7/1/03; rev. 7/01/11)~~

~~**Rule 6.10 Trial Setting**~~ (Effective 7/1/03; rev. 7/1/09; rev. 7/01/11) **(TO BE DELETED)**

~~(a) A case will be set for trial only after the filing of an At-Issue Memorandum,~~

~~—Preliminary Declarations of Disclosures or an order pursuant to Family Code section~~

~~—2107, subd. (b)(2) or (3), and a settlement conference is held. (Effective 7/1/03; rev.~~

~~—7/1/09; rev. 7/01/11)~~

~~(b) A case will only be set for trial when, in the discretion of the Judicial Officer conducting the settlement conference, the attempt to resolve the issues presented has reached an impasse and the matter is ready to proceed to trial and each party has filed with the Court a completed Declaration regarding service of the Preliminary Declarations Disclosure. (Effective 7/1/03; rev. 7/1/09; rev. 7/01/11)~~

Rule 6.8 Case Status Conferences, Family Centered Case Resolution, and Settlement Conferences (TO BE ADDED).

These rules apply to all cases filed after January 1, 2013, seeking Dissolution of Marriage; Nullity; Legal Separation; Termination of Domestic Partnership; and establishment of paternity under the Uniform Parentage Act. The parties and attorneys are expected to comply with the procedural milestones set forth in California rules of Court, Rule 5.83.

Rule 6.8.1 Status Conference

- a. When the Petition is filed, the Clerk of the Court shall set an initial Status Conference in approximately 120 days. The notice of the initial Status Conference date shall be provided to the Petitioner at the time the Petition is filed. The Petitioner shall serve a copy of the Notice on the Respondent along with the Petition.
- b. If the Response is filed after the initial Status Conference, the Court shall provide to all parties notice of the next Status Conference. If the next Status Conference is set more than 90 days after the Response is filed, the Court may advance the Status Conference to a date that is closer to 60 calendar days after the Response is filed.
- c. If the Petition has been served and proof of service filed, a Response has been filed or default entered, and Preliminary Declarations of Disclosure have been served, any party may file a Request and Order to Change Status or obtain a Case Resolution Conference Date and request a new Status Conference date or a Family Centered Case Resolution Conference (FCCRC). Preliminary Declarations of Disclosure are not required in cases

filed under the Uniform Parentage Act. In any action, if a final and complete Judgment has been entered, the Status Conference will be vacated.

- d. The purpose of the Status Conference is to review the status of the case and progress toward resolution, including whether the procedural milestones described in California Rules of Court, Rule 5.83, subd. (c)(4), have been met.

- e. At the Status Conference the Court may do any of the following:

- i. Refer the case to mediation;
- ii. Consider the procedural steps to reach disposition in the case;
- iii. Set time limits and deadlines, including but not limited to service of process and filing proof of service, entry of default, service of preliminary declarations of disclosure, or submission of judgment;
- iv. Appoint an attorney for a minor child upon the stipulation of the parties or schedule a hearing for this issue to be considered;
- v. Schedule a FCCRC, hearing, or trial on all or some issues;
- vi. Schedule a further Status Conference;
- vii. Put on the record stipulations of the parties resolving all or some of the issues in the case, and terminate the marital status if the parties are in agreement and all appropriate milestones have been met;
- viii. Take any other actions permitted by law that would promote a just and efficient disposition of the case.

- f. Attorneys and self-represented parties shall attend each Status Conference unless excused in advance by the Court, the case has been dismissed, or a Judgment resolving all issues has been filed. Parties who are represented by an attorney are not required to attend a Status Conference unless ordered by the Court to appear.

- g. Appearance at a Status Conference may be made via teleconference, provided that the party or attorney has made arrangements with CourtCall, LLC, for such an appearance and that the Court has not ordered the party or attorney to appear in person. At least ten calendar days before the scheduled Status Conference, the attorney or party must arrange for the telephonic appearance and pay the required fee for CourtCall's services. On the day of the Status Conference, those appearing by telephone must call the toll-free conference line designated by CourtCall at least five minutes before the Status conference.

- h. If the procedural milestones described in California Rules of Court, Rule 5.83, subd. (c)(4) have not yet been met, the Status Conference will be continued for no more than 60 days upon a showing of due diligence by the Petitioner.

- i. If no party appears at a scheduled Status Conference without leave of Court obtained in advance, a further Status Conference will be scheduled. The Clerk shall provide notice of

the Status Conference, notifying the parties that if they fail to appear at the next Status Conference, the case may be subject to dismissal. If both parties fail to appear at the next Status Conference, notice will be given that the case is subject to dismissal unless identified action is taken.

- j. Parties who are participating in mediation or who are actively negotiating a settlement of their case will be exempt from the Status Conference for 180 days, if they file notice of the same with the Court. If the Judgment or a Request for Dismissal is not filed within 180 days of the filing of the notice, the Court will proceed with the Status Conference.
- k. Parties who are attempting reconciliation will be exempt from the Status Conference for 180 days, if they file notice of the same with the Court. If a Judgment or Request for Dismissal is not filed within 180 days of the filing of the notice, the Court will proceed with the Status Conference.

Rule 6.8.2 Family Centered Case Resolution Conference

- a. Attendance at the Family Centered Case Resolution Conference (FCCRC) is mandatory. Personal appearance by the parties and attorneys is encouraged. However, if a party is out of state or must travel long distances to attend the FCCRC, consideration will be given to allow the party to appear by counsel or telephonically, if the party is self-represented.
- b. At the FCCRC the Court may set the matter for further FCCRC, Status Conference, Settlement Conference, or Trial and a Mandatory Settlement Conference.

Rule 6.8.3 Voluntary Settlement Conferences

At any time after the Preliminary Declarations of Disclosure have been exchanged and proof thereof filed with the Court, and after participating in an informal "meet and confer conference," the parties and/or counsel may request a Voluntary Settlement Conference. The request shall be accompanied by an Income and Expense Declaration, as well as a Settlement Conference Statement that identifies all issues in detail, and that party's position with respect to each issue.

Rule 6.8.4 Mandatory Settlement Conference

- (a) When a matter is set for trial, a Mandatory Settlement Conference will be scheduled 30-60 days prior to the trial. Statement must be filed five (5) calendar days before the settlement conference date.
- (b) At least five (5) days prior to the Mandatory Settlement Conference, the parties shall exchange and file current Income and Expense Declarations and a Settlement Conference Statement that identifies all issues in detail, and that party's position with respect to each issue in all cases involving monetary issues. The Settlement Conference Statement shall include points and authorities, if appropriate. An updated Income and Expense Declaration will not be required if there are no remaining issues of child support, spousal support, or attorneys' fees.
- (c) A request to continue a settlement conference is within the discretion of the court and requires a showing of good cause.

- 6.9 Appointment of Expert Witness (Renumbered from 6.11)
- 6.10 Child Custody and Visitation (Renumbered from 6.12)
- 6.11 Civil Investigation (Renumbered from 6.13)
- 6.12 Family Law Facilitator (Renumbered 6.14)
- 6.13 Judicial Council Form 191 – Child Support Case Registry (Renumbered from 6.15)
- 6.14 Counsel for Minor Children (Renumbered from 6.16)
- 6.15 Collaborative Law Case (Renumbered 6.17)

Rule 6.16 Failure to Comply with Rules (TO BE ADDED)

Any failure to comply with these rules may result in the issuance of an order to show cause why sanctions, including monetary sanctions, issue sanctions, evidence sanctions, or terminating sanctions, should not be imposed.

Rule 6.18 Title IV-D Support Actions (TO BE ADDED)

Rule 6.18.1 Meet and Confer Requirement (Effective 07/01/2012)

Prior to the hearing of any matter on the IV-D calendar, all attorneys and self-represented parties must in good faith participate in a “meet and confer conference” with an attorney or other representative designated by the Chief Attorney of the local child support agency in Room 300 of the Justice Building. The purpose of the “meet and confer conference” is for the parties to identify and narrow issues that will require a hearing, exchange and review documentary evidence, and attempt to resolve the issues of the matter by stipulated agreement.

This rule does not apply to hearings regarding motions or requests to modify or quash income withholding orders or health insurance assignments, requests for issuance of a SLMS release, or to persons who are appearing telephonically.

Chapter VIII. Probate Matters.

Rule 8.1.3.1 Matters Not Ready for Hearing (Effective 7/1/03; rev. 7/1/09 rev. 1/01/13)

(a) All matters set for hearing are reviewed in advance by the probate examiner's office. Examiner's notes are posted under “Tentative Rulings” (also known as “Probate Notes”) on the Kern County Superior Court website. Any documents submitted to resolve examiner's notes shall be filed by 9:00 a.m. two court days prior to the hearing date, or they may not be considered by the court and the matter may be continued. *(Recommendation is being made to mirror the piece in the PSP section Rule 8.1.5.a shown above) (TO BE ADDED)*

(b) On the call of the calendar, matters not ready for hearing normally will be dropped from calendar. A matter is considered not ready for hearing if notices, supplements, proofs of service, or

other documentation curing all discrepancies other than strictly court determined matters are not filed prior to 9:00 a.m. at least two (2) court days before the hearing. (Effective 07/01/03; rev. 1/1/13) **(TO BE CHANGED FROM (a))**

Rule 8.7.1 Personal Property Bond (Effective 7/1/03; rev. 1/1/13)

Reports of conservators and guardians should reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income, and the existence of any facts that justify an additional bond. The report should also show any blocked bank accounts. The report must contain the current address and whereabouts of the conservatee and conservator and describe the conservatee's status and condition. (Effective 7/01/03; rev. 7/1/09)

- (a) ~~All proposed conservators are required to view a court approved video regarding their duties and to file a written acknowledgement that they have done so. (Effective 07/01/03; rev. 7/01/09)~~**
(TO BE DELETED)